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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,213	08/07/2003	Alex Alden Peterson	STJUDE 3.0-006 CON II CON	4084
530 7590 04/27/2011 LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			EXAMINER YABUT, DIANE D	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 04/27/2011	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/637,213	PETERSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	DIANE YABUT	3734	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 83-87 and 89-100 is/are pending in the application.
- 4a) Of the above claim(s) 91-99 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 83-87, 89-90, 100 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action filed 11/16/2009 is persuasive and, therefore, the finality of that action is withdrawn.
2. New grounds of rejection are set forth below. Claims 83-87, 89-100 are pending in this application. Claims 91-99 are withdrawn from consideration.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

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Claims 83-85, 87, 89-90, and 100 are rejected under 35 U.S.C. 102(e) as being anticipated by **Suyker et al.** (U.S. Patent No. **6,485,496**).

Claims 83, 100: Suyker et al. disclose in Figures 1-12 an expandable structure (“annular element”) **1** which is annularly continuous and configured for disposition annularly around the outside of a tubular graft conduit so that the structure forms a continuous and uninterrupted ring all the way around the outside of the tubular graft conduit; a plurality of first members **5, 10** extending from the structure in an annular array which is substantially concentric with the structure, the first members being resiliently biased to extend substantially radially out from the structure and being elastically deflectable to an orientation substantially parallel to a central longitudinal axis of the structure; and a plurality of second members **6, 11** extending from the structure in an annular array which is substantially concentric with the structure, the second members being resiliently biased to extend substantially radially out from the structure and being elastically deflectable to an orientation substantially parallel to the central longitudinal axis of the structure (col. 9, lines 15-20: “the device might also be made of a resilient material or of a shape-memorizing metal, so that the device can move to the expanded position without external forces being exerted”), the first members being configured to pass through the side wall of the tubular graft conduit at respective locations that are spaced from one another around the side wall of the tubular graft conduit, and the first and second members being further configured to reach respective locations on the side wall of the tubular body conduit that are spaced annularly around the aperture when the connector is in use and the first and second members are

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extending substantially radially out from the structure, wherein the structure includes a plurality of closed shapes (as in Figures 1-2, 8, 11), each of which has an open center, and each of which is compressible and expandable in a direction that is annular of the structure (col. 9, lines 15-20), all of the shapes being connected to one another in a single row that extends annularly around the structure and so that open centers of all of the shapes are disposed in the single row, each of the closed shapes being connected to a next adjacent closed shape in the row along only a central portion of a length of a side of the shape that is transverse to the direction, end portions of the length of the side that continue beyond either end of the central portion being spaced from the next adjacent closed shape in the direction that is annular of the structure, so that expansion of any of the shapes in the direction that is annular of the structure causes the entirety of the structure and the entirety of the connector to annularly enlarge.

Claim 84: The first and second members extend from respective first and second axially spaced portions of the structure.

Claim 85: The first and second members are deflected substantially parallel to the central longitudinal axis of the structure (as in Figures 7-8), they extend in respective opposite directions away from the structure.

Claim 87: The first and second members are further configured for disposition on respective opposite sides of the side wall of the tubular body conduit when the connector is in use and the first and second members are extending substantially radially out from the structure (as in Figures 10-11).

Claim 89: The structure **1** is configured for axial flexibility (col. 9, lines 15-20).

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Claim 90: The structure and the first and second members are all one piece.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 86 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Suyker et al.** (U.S. Patent No. **6,485,496**).

Suyker et al. disclose the claimed device except does not expressly disclose that the connector is comprised of nitinol. However, in col. 9, lines 15-20: "the device might also be made of a resilient material or of a shape-memorizing metal, so that the device can move to the expanded position without external forces being exerted", and it was old and well known in the art to use nitinol as a shape-memorizing metal since it is biocompatible and effective in surgical applications.

***Response to Arguments***

6. Applicant's arguments with respect to claims 83-87, 89-90, 100 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIANE YABUT whose telephone number is (571)272-6831. The examiner can normally be reached on M-F: 9AM-4PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Diane Yabut/  
Examiner, Art Unit 3734